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No. 522

IN THE

Supreme Court Of The United States

October Term, 1964

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, ET AL,
Petitioners

v.

AAXICO AIRLINES, INC.
Respondent

ANSWER OF AAXICO AIRLINES, INC., TO PETITION FOR CERTIORARI

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Respondent AAXICO AIRLINES, INC., has filed a Petition for Writ of Certiorari to review the decision of the Court of Appeals in this cause. Respondent believes this Court should grant its Petition because this case presents issues of jurisdiction similar, but not identical, to those raised in Railway Clerks v. United Airlines, Cause No. 801 on the Docket of this Court, set for argument in October, 1964. Because Respondent believes this case should be considered along with the Railway Clerks case, we are filing herewith a prompt answer to the Petition of AIR LINE PILOTS ASSOCIATION, INTERNATIONAL.

REPLY TO QUESTIONS PRESENTED BY UNION

Reply to Questions 1, 3 and 6:

This case does not present an issue as to whether the Courts have jurisdiction to maintain the status quo pending further actions by the parties before administrative bodies.

The judgment of the trial court does not, and does not purport to, merely maintain the status quo pending submission of the dispute to the System Board. (R. p 646 et seq. References are to the printed record filed in the Court of Appeals.)

The order declares the contract to be in force. (R. p. 647) The Court found that the acts of AAXICO in failing to recall and train the C-46 pilots to fly four engine aircraft breached the contract. (R pp 689, 691, Conclusion of Law G was omitted from the printed record and appears at p 928 of the original record filed in the Court of Appeals.) The order requires that the System Board be re-created to try the damage issue. In the context of the evidence that AAXICO is engaged in an entirely dissimilar air operation from that in which it was engaged when the C-46 pilots were employed (R pp 410-11), it is apparent that this order, if enforced, would substantially change the relationship of the parties.

A significant decision illustrating this is International Association of Machinist v. Northwest Airlines,

Inc., 193 F. Supp. 781 (District Court, Minn., 1961). This was a case growing out of the dispute between flight engineers and airlines over the role to be played by flight engineers in jet aircraft. The union, basing its claim on contract provisions that the union would represent flight engineers employed on jet aircraft, sought an injunction requiring the airline to employ flight engineers on jets pending a determination of the controversy by an emergency board appointed by the President under the provisions under the Railway Labor Act. The flight engineers had not been previously employed in operation of jets on a regular basis. The Act provides that after appointment of an emergency board and until thirty days after the board has made its report to the President, "no change except by agreement shall be made by the parties to the controversy in the conditions out of which the dispute arose."

The Court held at page 783:

"The Court is of the view that the members of plaintiff's Union did not have a prior employment status with Northwest Airlines of the kind contemplated by the wording and apparent purpose of Section 160 of the Railway Labor Act so as to require Northwest to put plaintiff's members on as flight engineers on jet aircraft pending, and for 30 days after, the filing of the report of the Presidential Board. Absent the creation of the Presidential Board, the status of the parties was such that the Court could not have either required the flight

engineers to work, or obligated the Airline to employ them. The creation of the Presidential Board did not create any different status or obligations. For the Court to grant the requested relief would, in effect, create a new status, and not reinstate a former one."

If we understand ALPA's contentions correctly, it claims not only that AAXICO breached the agreement by failing to retain and recall the C-46 pilots, but it also claims that AAXICO violated the Railway Labor Act by fixing, and on occasion changing, the terms of employment of the DC-6A pilots without consulting with and bargaining with ALPA. Thus, without regard to the ultimate determination as to whether the contract was terminated, ALPA claims a right to require AAXICO to bargain with it regarding the terms of employment of the DC-6A pilots. That is, ALPA claims the right, by reason of its certification as bargaining agent to AAXICO, to represent whatever pilot employees AAXICO may have, and not just the unit which followed the LOGAIR contract to Capitol Airways, Inc.

This claim presents the converse of AAXICO's claim that the shift of the bargaining unit to Capitol Airways, Inc., ended the representative status of ALPA to AAXICO. This issue is raised in AAXICO's Petition for Writ of Certiorari, and we submit should be resolved by this Court.

Reply to Question 2:

This case does present a question as to the jurisdiction of the Courts to determine whether Respondent's obligation under the contract had terminated because the labor unit involved had followed the work to a new employer.

When ALPA and its pilot members by contract shifted the bargaining unit to Capitol Airways, thereby following the C-46 LOGAIR jobs, (R pp 441-473; 405.) they created a question regarding the representative status of ALPA with AAXICO which can be resolved within the framework of the Railway Labor Act only by the National Mediation Board. If the National Mediation Board decides that ALPA is no longer the labor representative to AAXICO, because the bargaining unit went to Capitol, all questions of construction of the contract between ALPA, the pilots and AAXICO are moot. For this reason the representation dispute should be first determined before the question of ALPA's and the pilots' entitlement to System Board relief is considered.

This is the clear import of the decisions of the Second Circuit in Ruby v. American Airlines, 323 F.2d 248 (1963 cert. den. 11 L Ed 2d 611) and the Sixth Circuit in Railway Clerks v. United Airlines, 325 F.2d 576 (1963 cert. granted April 20, 1964) following General Committee v. M.K.T., 320 US 323, 336-7.

These holdings are the necessary result of the provisions of Section 2 Sixth and Ninth, 203 and 204 of the Railway Labor Act.

ALPA conceded in its motion to advance this cause on the docket of the Circuit Court that there are two groups of pilots whose jobs are at stake, the C-46 pilot group and the qualified DC-6A pilots. Clearly there is a representation dispute.

It is equally clear that the Act vests jurisdiction of the dispute exclusively in the National Mediation Board. Orderly administration of the Act requires that this issue be first resolved before questions concerning the grievance machinery are raised and, perhaps uselessly, disposed of.

This issue is raised by AAXICO AIRLINES, INC., in its Petition for Writ of Certiorari. This question is included in the broad language of Question 2 as presented by ALPA. We respectfully urge that the Court grant the petition submitted by AAXICO AIRLINES, INC.

Reply to Question 4:

No issue is presented in this case as to whether the Courts have jurisdiction to construe the collective bargaining contract to the extent necessary to determine whether the dispute is major because there were

changes in the terms and conditions of employment by the employer.

The Court of Appeals quite obviously had authority to and did examine and construe the contract and determined that the dispute was a minor dispute within the exclusive jurisdiction of the System Board, (Air Line Pilots Association, International, Petition, Appendix B, pp 17a and 18a). Insofar as the Court of Appeals dealt with the dispute between the parties, this decision was, we submit, correct. However, the Court of Appeals did not dispose of the representation issue which is presented by AAXICO's Petition for Writ of Certiorari.

Reply to Question 5:

No issue is presented by this case as to whether the employer may change working conditions on expiration of the contract without exhaustion of the procedures provided in Section 6.

It is undisputed that the C-46 pilots were properly furloughed when AAXICO lost its LOGAIR contract. (R p 24, Complaint par. 26) The question is whether the C-46 pilots have a right, under the contract, to recall and training for operation of four engine aircra. This is not a case such as Manning v. American Airlines, 329 F.2d 32, in which the employer sought to change one of the terms of employment upon expira-

tion of the contract term although the business and the employees' employment continued uninterrupted.

The change of which AAXICO gave notice was the termination of the contract by reason of the destruction of its subject matter. (R p 48, Complaint, Appendix D) The procedures of Section 6 and of the Act were exhausted when the union failed to timely invoke them. (R p 22, Complaint, par. 19, 20, 21)

The Railway Labor Act created machinery for the rapid adjustment of disputes between carriers and their employees, and the reason for directing these matters to mediation and to the administrative boards rather than the courts was to achieve speed in disposition. Ruby v. American Airlines, 323 F.2d 248 (2nd Cir. 1963); Railway Labor Act Sec. 2 General Purposes (4) and (5), Sec. 2 Sixth and Ninth, Sec. 5, Sec. 6, Sec. 204.

What happened in the case at bar?

The employer, after it lost its business, advised the union that it considered the contract at an end. The union, by letter, raised an ambiguous objection. (R. pp 49-50, Complaint, Appendix E). There was, therefore, a dispute of some proportions relating to "the interpretation of application of agreements". What was the employer's duty at this point? The Act spells it out: to meet with the union and discuss the dispute on request and within a short space of ten

days. Railway Labor Act, Sec. 2 Sixth. Obviously, the Act places the burden on the party raising a dispute to raise it promptly and seek a solution by negotiation. If negotiation fails, the System Board is provided for "minor" disputes and mediation for "major".

What actually happened is far different from the procedure contemplated by the Act. The union raised its ambiguous dispute but did not seek negotiation of a solution as required by the Act, or System Board action as required by the Act and the contract. On the contrary, it did nothing.

Eight months later, AAXICO went into another phase of the LOGAIR business using four engine aircraft and using qualified pilots procured from the pilot supply companies. (R p 406) The union asserted that this breached the agreement. Once again the union ignored the processes of the Railway Labor Act. This time it sought enforcement of the collective bargaining agreement in the Florida State Courts. (R p 59) This suit was filed on June 28, 1961; not until July 20, 1961, did ALPA attempt to go back and attempt "lip service" to the Act by raising the purported "grievance" by letter to AAXICO's president. (R p 59) When this was rejected, no appeal was made to the Board of Adjustment.

ALPA claims that this rejection of the July 20, 1961, grievance frustrated its efforts to go to System

Board even though no application was ever made or attempted to the System Board. A similar contention was rejected in I.A.M. v. Northwest Airlines, 304 F.2d 206 (8th Cir. 1962).

The reason for the statutory provision requiring the prompt raising of disputes could hardly be better demonstrated than the case at bar. Had ALPA and the C-46 pilots promptly and timely exhausted the procedures provided for the settlement of disputes in Sec. 2 Sixth, Sec. 203(b) and in the contract, the interests of all parties and those of the public would have been protected. Compare this with the present situation of the parties and the public. The dispute remains undecided after three years. The C-46 pilots claim $2,000,000 or more in lost wages. Under the undisputed evidence AAXICO cannot complete its contracts with the United States if it is required to use the C-46 pilots to do so. Under the undisputed evidence the failure of AAXICO to complete its contract would be damaging to the national defense effort and therefore to the public interest.

Reply to Question 7:

No issue is presented as to whether AAXICO can avoid its obligations under the Railway Labor Act by the device of contracting for qualified DC-6A pilots from pilot supply companies.

The Court of Appeals held that, for purposes of

the appeal, it would consider the DC-6A pilots to be employees of AAXICO. (Air Line Pilots Association, International, Petition, Appendix B, pp 12a and 13a)

CONCLUSION

AAXICO AIRLINES, INC., respectfully submits that the Petition of AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, ET AL, should be denied and that the Petition of AAXICO AIRLINES, INC., should be granted.

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